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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,235	06/18/2007	Ulrich Hansenberger	30475-00001	3844
33772	7590	01/20/2010	EXAMINER	
MCDONALD HOPKINS LLC			LOUIS, LATOYA M	
600 Superior Avenue, East				
Suite 2100			ART UNIT	PAPER NUMBER
CLEVELAND, OH 44114-2653			3771	
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			01/20/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/596,235	HANSENBERGER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	LATOYA LOUIS	4177	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 June 2007.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 11-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 11-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>6/5/2006, 8/13/2007</u>	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

This action is responsive to papers filed 6/18/2007. Claims 11-20 are pending.

### ***Specification***

The specification is objected to because it does not contain a "Background of the Invention" or a "Brief Summary of the invention" or a "Brief Description of the Several Views of the Drawings" or a "Detailed Description of the Invention". The following is provided for your guidance.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

### **Content of Specification**

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
  - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
  - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and

preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.

(h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.

(i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

(j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

(k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).

(l) Sequence Listing, See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

1. The disclosure is objected to because of the following informalities: The recitation of "claim 1" on page 2 is improper. The specification should not reference any claim numbers because claim numbers often change during prosecution. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 11-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 11, it is not clear about which axis the platform is being rotated i.e. horizontally, vertically. The center of gravity is a point and thus the axis of rotation could occur anywhere outside this point. In addition fig. 1 is not clear nor descriptive enough because it is not clear where axis "A" in fig. 1 is located on the platform in fig. 2. Therefore one could not practice the invention as claimed without undue experimentation.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 18, there is no clear method steps recited. In claim 18, it is not clear how one is to stimulate muscles by applying the device of claim 11. How is one to use the device of claim 11 in order to stimulate muscles that is different from claim 19 and 20? How does the device of claim 11 perform three different methods? What do you have to do to the device other than just turn it on?

Regarding claim 19, there is no clear method steps recited. In claim 19, it is not clear how one is to increase blood circulation by applying the device of claim 11. How is one to use the device of claim 11 in order to increase blood circulation that is different from claims 18 and 20? How does the device of claim 11 perform three different methods? What do you have to do to the device other than just turn it on?

Regarding claim 20, there is no clear method steps recited. In claim 20, it is not clear how one is to build-up muscles by applying the device of claim 11. How is one to use the device of claim 11 in order to build-up muscles that is different from claims 18 and 19? How does the device of claim 11 perform three different methods? What do you have to do to the device other than just turn it on?

***Claim Rejections - 35 USC § 102***

To any extent the claims are understood and appear to be supported by a clear and complete disclosure, the following appears appropriate.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Gardner US Pat. No. 5, 755, 652.

Regarding claim 11, Gardner discloses in fig. 1 a device for biomechanical stimulation, comprising a base plate (16), a pedestal (frame 26 as pedestal) connected with said base plate and a platform (20) connected to said pedestal via a driving unit (25) (col. 2 lines 26-29, 38-40 disclose that the platform is connected to the motor via a switch and the motor is positioned by the gear chain 25 as driving unit which is connected to the platform. Therefore, the driving unit 25 connects the pedestal to the platform), characterized in that said platform (20) during usage executes a circular or elliptical movement about an axis which is located outside of the centre of gravity of the platform, thereby undergoing a parallel displacement (col. 2 lines 15-20, 38-43, col. 3 lines 4-5, 35-41, 51-58 disclose that the platform rotationally tilts and thus rotates to a degree. As further seen from the figures, the axes of rotation of the tilts are outside of the center of gravity of the platform. For example, when the platform rotationally tilts to the right away from the pedestal 26, the platform is rotating clockwise and the axis of this clockwise rotation is outside of the center of the platform. In addition, as seen from fig. 4, the axis of rotation would be about the center of shaft 70 and the center of gravity would be in line with the center of shaft 78 which is always offset from the axis of rotation. During the rotation, the center of the platform undergoes parallel displacements).

Regarding claim 12, Gardner discloses that the platform has an ergonomic form (as disclosed from col. 2 lines 40-47, the platform is designed for exercise and includes a motor to aid in changing direction, and is thus designed for increased productivity) and a lower surface

area than the surface of the base plate (As seen from fig. 1, the base plate 16 has a much greater surface area than the platform 20).

Regarding claim 13, Gardner discloses that the platform (20) is brought into a circular or elliptical movement by means of an eccentric drive (motor 24 as eccentric drive) (col. 2 lines 26-37).

Regarding claim 14, Gardner discloses that the base plate (16) is fixed by applying a weight (It is inherently shown from the figure that the base plate is fixed to the floor or support surface by the weight of the device).

Regarding claim 15, Gardner discloses that wheels (ball race annular bearings 14 and 18 as wheels) are provided for transport of said device (col. 2 lines 15-20 disclose that the annular bearings 14 transport lower part 12 as part of the device around a vertical axis).

Regarding claim 16, Gardner discloses in fig. 1 that said wheels (14) are provided in the vicinity of the connection of pedestal and base plate (the wheels 14 are in close proximity and in the area of the base plate's connection to the pedestal 26).

Regarding claim 17, Gardner discloses units for controlling said device are provided at the pedestal (col. 2 lines 38-42 disclose that a switch is located on the frame 26 as pedestal to operate the motor 24 of the device).

Regarding claim 18, Gardner discloses a method for biomechanical stimulation of muscles, said method comprising the step of applying biomechanical stimulation by means of a device according to claim 11 (col. 3 lines 51-58, col. 2 lines 42-46, 58, 63-67 disclose that a

user's muscles are mechanically stimulated via the rotational and tilting characteristics of the device when the device is used for balancing and exercising).

Regarding claim 19, Gardner discloses a method of increasing the blood circulation of a body part, said method comprising the step of increasing said blood circulation by means of a device according to claim 11 (col. 3 lines 51-58, col. 2 lines 42-46, 58, 63-67 inherently teach increasing blood circulation via the device because the device increases strength and flexibility via exercising, working against resistance, and balancing, all of which increase blood circulation).

Regarding claim 20, Gardner discloses a method of build-up of muscles, said method comprising the step of building up muscles by means of a device according to claim 11 (col. 3 lines 51-58, col. 2 lines 42-46, 58, 63-67 disclose that the device increases the user's strength and works a user against resistance. Thus muscles are increased).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Prince US Pat. No. 3, 765, 407 discloses an exercise stand that rotates.

Duke US Pat. No. 3, 911, 908 discloses an electromechanical leg exercising apparatus that can read on many of the current claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LATOYA LOUIS whose telephone number is (571)270-5337. The examiner can normally be reached on Monday-Friday, 9:30am-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on 571-272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. L./  
Examiner, Art Unit 4177  
12/30/09

/Danton DeMille/  
Primary Examiner, Art Unit 3771